



# Be More Alert about Advertising

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## **Overview**

You see advertising every day. In the newspapers, magazines, television, even on the Internet. When the seller promises something about the product, be a cautious buyer/consumer, and always remember the saying "it's too good to be true."

Under the Federal Trade Commission Act:

- Advertising must be truthful and non-deceptive;
- Advertisers must have evidence to back up their claims; and
- Advertisements cannot be unfair.

Additional laws apply to ads for specialized products like consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales. And every state has consumer protection laws that govern ads running in that state.

## **What makes an advertisement deceptive?**

According to the FTC's Deception Policy Statement, an ad is deceptive if it contains a statement - or omits information - that:

- Is likely to mislead consumers acting reasonably under the circumstances; and
- Is "material" - that is, important to a consumer's decision to buy or use the product.

## **What makes an advertisement unfair?**

According to the Federal Trade Commission Act and the FTC's Unfairness Policy Statement, an ad or business practice is unfair if:

- it causes or is likely to cause substantial consumer injury which a consumer could not reasonably avoid; and
- it is not outweighed by the benefit to consumers.

## **Bait and Switch Advertising**

It's illegal to advertise a product when the company has no intention of selling that item, but instead plans to sell a consumer something else, usually at a higher price. For more information, ask the FTC for its Guides Against Bait Advertising.

## **Contests and Sweepstakes**

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Sweepstakes-type promotions that require a purchase by participants are illegal in the United States. Other agencies, including the United States Postal Service (USPS) and the Federal Communications Commission (FCC), also enforce federal laws governing contests and prize promotions. And each state has laws that may require promoters to make disclosures, seek licensing, or post a bond. Since state laws vary, check with the Attorney General's Office in the state(s) in which you plan to advertise. If a contest or promotion involves telephone calls, the FTC's Telemarketing Sales Rule requires specific disclosures, such as the odds of winning a prize, how to participate without buying anything, and that no purchase or payment is required to win. If pay-per-call services are involved, the FTC's 900 Number Rule requires certain disclosures.

### **Endorsements and Testimonials**

Endorsements may not contain representations that would be deceptive, or could not be substantiated, if the advertiser made them directly.

- Endorsements by consumers must reflect the typical experience of consumers who use the product, not the experience of just a few satisfied customers. If an endorsement doesn't reflect users' typical experience, the ad must clearly disclose either what consumers can expect their results to be or the limited applicability of the endorser's experience. Saying "Not all consumers will get these results" or "Your results may vary" is not enough.
- Endorsements by celebrities must reflect the celebrity's honest experience or opinion. If the endorsement represents that the celebrity uses the product, that celebrity actually must use the product. Once a celebrity (or expert) has endorsed a product, the advertiser has an obligation to make sure the endorsement continues to reflect the endorser's opinion.
- To give an expert endorsement, a person must have sufficient qualifications to be considered an expert in the field. But just being an expert isn't enough. Expert endorsements must be supported by an actual evaluation, examination, or testing of the product that other experts in the field normally would conduct to support the conclusions in the endorsement.
- Advertisers also must disclose any material connection between a person endorsing a product and the company selling the product. A "material connection" is defined as a relationship that might affect the weight or credibility of the endorsement. For example, if an endorser is an employee or relative of the advertiser, that fact must be disclosed because it is relevant to how much weight a consumer would give to the endorsement. Similarly, an advertiser must disclose if a consumer has been paid for giving an endorsement.

### **"Free" Claims and Rebate Offers**

When a "free" offer is tied to the purchase of another product, the price of the purchased product should not be increased from its regular price. In addition, if you're advertising a product as "free" or offering it at a low cost in conjunction with the purchase of another item, the ad should clearly and conspicuously disclose the terms and conditions of the offer. Disclose the most important information - like the terms affecting the cost of the offer - near the advertised price.

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Ads that include rebate promotions should prominently state the before-rebate cost, as well as the amount of the rebate. Only then will consumers know their actual out-of-pocket cost and have the information they need to comparison shop. Rebate promotions also should clearly disclose any additional terms and conditions that consumers need to know, including the key terms of any purchase requirements, additional fees, and when consumers can expect to receive their rebate.

### **Guarantees**

If an ad mentions that a product comes with a guarantee or warranty, the ad should clearly disclose how consumers can get the details. Any conditions or limits on the guarantee or warranty (such as a time limit or a requirement that the consumer return the product) also must be clearly disclosed in the ad. Finally, the law requires companies to make copies of any warranties available to consumers before the sale. This applies to retail sales, sales by phone or mail, and online transactions. For more information, ask the FTC for the Guides for the Advertising of Warranties and Guarantees.

### **Leasing**

The Consumer Leasing Act and Regulation M include specific rules that apply to ads for consumer leases. For example, if a lease advertisement includes certain terms - such as the amount of any payment due before or at lease inception - the ad also must make other clear and conspicuous mandatory disclosures about the terms of the lease. These rules also apply if the ad contains phrases like "no money down" or "no down payment."

### **Made in the U.S.A.**

A product has to be "all or virtually all made in the United States" for it to be advertised or labeled as "Made in the U.S.A."

### **Subliminal Advertising**

It would be deceptive for marketers to embed ads with so-called subliminal messages that could affect consumer behavior. However, most consumer behavior experts have concluded that such methods aren't effective.

### **For More Information**

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. To file a complaint or to get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

### **Consumer Protection Laws**

Here are some laws that you should know about.

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1. *Fair Credit Billing Act*: The FCBA requires that the credit billing agencies (usually of the seller) promptly respond to consumer billing complaints in writing and investigate all billing errors.
2. *Truth in Lending Act*: The TILA requires that creditors who deal with consumers disclose information about finance charges and other related aspects of credit transactions. This disclosed information should be in writing.
3. *Equal Credit Opportunity Act*: The ECOA prohibits lenders from discriminating against the consumer on the basis of race, color, national origin, religion, age, marital status, sex, or receipt of public assistance.
4. *Consumer Leasing Act*: The CLA, which regulates leases exceeding four months, requires that certain lease costs and terms be disclosed to the consumer. This lease must concern property to be used for the consumer's personal purpose, e.g., family or household purposes.
5. *Fair Credit Reporting Act*: The FCRA requires that consumer reporting agencies, such as credit bureaus, provide confidential and accurate information only to creditors or others authorized to know about the consumer's credit history.
6. *Electronic Fund Transfer Act*: The EFTA requires that participants abide by certain accepted practices when they deal in transactions involving preauthorized transfers and error resolutions.

Reference(s):

<http://www.ftc.gov/bcp/online/pubs/buspubs/ad-faqs.shtm>

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